IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2548 of 2004

Rakesh Grover.....Petitioner

Versus

Air India Limited & Ors.....Respondents

Mr. Mohan Bir Singh, for Petitioner

Mr. S.K. Talsania with Mr. J.S. Saluja i/b. M.V. Kini & Co.,
for the Respondents.

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.

DATE : 4th May,2005

. It is the case of the petitioner that as his date of entry as a flight dispatcher was 11th May, 1992 he ought to have been selected for foreign posting as against respondent No.5 who joined on 20th July, 1992. It is the case of the petitioner that earlier there was a clause in the promotional policy which read as under:-

> "An Officer who has been superseded will not be eligible for foreign posting that would arise in the present grade and will only be eligible for being considered for foreign posting if found suitable as per his turn after he is promoted to the next higher grade."

. By a communication of April 12, 1999 the Heads of Departments were informed that pursuant to the meeting held on January 28, 1999 a discussion took place in the matter of delinking of promotion and posting and it was decided that effective from April 1, 1999 promotional posting should be treated separately. In support of his argument learned Counsel had drawn our attention to the case of Mr. B.S.Polley

and Mr. J.H. Wadia. J.H. Wadia had jointed the service as flight dispatcher some time in December, 1991 whereas B,.S. Polley joined on 29th July, 1991. Wadia had been selected as Manager on 1st March, 1999 and Polley only on 24th September, 2002. It is pointed out that pursuant to the policy decision taken by communication of April, 29, 1999 the posting of Wadia was cancelled and in his place it was directed that Polley should be sent on foreign posting. It is, therefore, submitted that the petitioner considering the said policy decision and as understood in the promotion of Polley the petitioner had to be sent on foreign posting and not respondent No.5 who had joined the service as flight despatcher on 20th July, 1992. In other words the contention is that it is the first entry as flight despatcher which is relevant for the purpose of consideration for foreign posting and the subsequent promotions are immaterial.

2. On behalf of the respondents earlier an affidavit was filed by Captain A. Prasad, Joint General Manager. Subsequent to the hearing of the matter the Respondent Corporation was directed to file an additional affidavit. That has been filed by A.K. Nandi, Regional Manager (Flight Despatch). In para.4 of the said affidavit it is sought to be explained that in terms of the policy, Polley could not have been sent for foreign posting in view of his supersession. However, in view of the policy decision and on the lifting of the bar on foreign posting for those who were not promoted the seniority list was not revised putting Mr. Wadia as Senior to Mr.Polley and all this took place within 2-3 months of the decision. The stand of the Corporation as understood from the affidavit is that, for the purpose of foreign posting, feeder

list is prepared of persons holding post of Assistant Manager, Deputy Manager, Senior Manager and Assistant General Manager. In the feeder list so prepared those holding the post of Assistant General Manager are placed at the top of the feeder list and thereafter the persons holding posts of Manager, Deputy Manager, Assistant Manager. It is from this feeder list which is prepared that the foreign posting is given to candidates who are otherwise suitable. In other words the contention is that it is not the first entry that is material, but subsequent promotions and holding of the post and the position in the feeder list. The earlier policy decision which was reversed only meant that in the case of an officer who was considered for promotion and was not considered then such person would not be considered for foreign posting even if he may be senior. It in no way affects the feeder list prepared as stated earlier.

3. Having heard Counsel we are of the opinion that the policy as now explained by the Corporation in the affidavit is reasonable and gives preference to more meritorious against less meritorious. A person who has not been promoted first cannot by mere fact of his first entry in the service, claim that against more meritorious candidates he should be given first posting. First and foremost there is no such policy. Even if such a policy was there it would be unreasonable. In other words the policy must always subserve the test of reasonableness to satisfy the mandate of Article 14 in a case of an authority like the Respondent Corporation. For the aforesaid reasons we do not find that there is any merit in the contention of the petitioner. In the light of that petition stands disposed of in terms of the affidavit filed by

the Respondent Corporation and as explained by us in our judgment.

(F.I.REBELLO, J.)

(S.P. KUKDAY, J.)